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NOTES.

CONSTITUTIONALITY OF STATUTES REQUIRING CORPORATIONS TO PAY EMPLOYES' WAGES IN MONEY.

The so-called "Store Order," or "Truck" System means the payment of wages otherwise than in lawful money. As all exchange springs primarily from barter, or the exchange of one commodity for another, independent of any circulating monetary medium, theoretically there would seem to be no economic objection to an employer's giving goods rather than money in return for an employee's services.[1] Practically, however, the great economic advantage possessed by the large labor-employing agents over their employees may result in forcing the em-

[1] See *Fraier* v. *People*, 141 Ill. 171 at p. — (1892.)

ployee to asquiesce in whatever terms of employment the employer may dictate, in order that the necessary means of subsistence may be procured, and in compelling the employee to take in payment for his services goods of an inferior quality at a high price. The system may also have the effect of limiting the variety of commodities which the employee might enjoy to those supplied by the "Company Store," since it may cut off his only source of money with which to purchase in the markets of the world such articles as his desires or necessities may prompt him to acquire.

It is to this objectionable phase of the system that hostile legislation has been directed, and that the situation is not a new one may be observed from the fact that as early as 1464 the English Parliament attempted to cope with it.[2] Many other acts were passed in the three and a half centuries following the 4 Edward IV,[3] and finally these miscellaneous statutes were repealed and their provisions embraced and re-enacted in a statute passed at the beginning of the reign of William IV, which prohibited miners of coal, salt, etc., and manufacturers of iron, etc., from paying their employees in anything but lawful money of the realm.[4]

The system has also flourished in the United States, and its alleged abuses have, as in England, called forth inimical legislation. But while in England the transcendent power of parliament has given efficacy to this legislation, in this country its effect has been modified by the constitutional restrictions of a state's power to abridge personal rights and liberty of contract contained in the Fourteenth Amendment of the Constitution of the United States. These restrictions have resulted in a contrariety of judicial opinion in the construction of similar statutes.

Indiana has sustained an act requiring mine owners to pay employees every two weeks, and declaring unlawful every contract by which the right to receive wages otherwise than in money was waived, the legislature having power thus to enact in order to protect and maintain the lawful money of the realm.[5] West Virginia has sustained an act requiring mining

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[2] 4 Edw. IV., C. 1 (1464); cited in *State* v. *Coal Co.*, 36 W. Va. 802, at p. 833 (1892), and in *State* v. *Loomis*, 115 Mo. 307, at p. 325 (1893).

[3] Acts enumerated in *State* v. *Coal Co.* 36 W. Va. 802, at p. 833 (*supra*).

[4] Truck Act, 1 and 2 Wm. IV, CC. 36, 37; 22 St. at Large, 484, 490 (1830-31); cited in *State* v. *Coal Co.* 36 W. Va. 802, at p. 832 (*supra*).

[5] *Hancock* v. *Yaden*, 121 Ind. 366 (1889).

and other corporations to pay employees in lawful money only, on the ground that corporations are licensees of the state, possessing peculiar privileges, and hence, subject to general supervision and regulation by the sovereign power;[6] but in two earlier cases the same state court declared invalid a statute which prohibited manufacturing and mining companies from selling goods to employees at a greater per cent. profit than to others,[7] and which prohibited payment in store orders and the like,[8] on the ground that such legislation was an unwarrantable interference with the liberty to contract and that it was class legislation. Tennessee sustained a store order act applying to mining companies, and its action has been affirmed by the United States Supreme Court, holding it to be a valid exercise of the police power, regardless of the reserve power to alter, amend or repeal the charter of a corporation.[9] A case recently decided by the Supreme Court of Vermont[10] sustains a statute providing for payment of wages in money only, under the reserve power, but intimates that exclusive of this power such legislation would be sustainable as a valid police regulation.

On the other hand, Pennsylvania flatly refuses to accept this doctrine, and holds that an act requiring mining and manufacturing companies to pay employees in money only, is unconstitutional and void as an attempt to prevent persons who are *sui juris* from making their own contracts.[11] Illinois takes the same stand on the ground that such legislation exceeds the scope of the state's police power, and that an adult could not be denied the right to make a contract in respect to labor and property under the guise of giving him protection.[12] Colorado is in accord with this view, on the ground of interference with the freedom of contract.[13] and Missouri also, because the act in question was held not to apply to a business affected with a public use and because of unreasonable classification.[14]

The Vermont case[15] sums up the law exhaustively, and the

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[6] *State* v. *Coal Co.*, 36 W. Va. 802 (*supra*).

[7] *State* v. *Coal Co.*, 33 W. Va. 188 (1889).

[8] *State* v. *Goodwill*, 33 W. Va., 179 (1889).

[9] *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13 (1901).

[10] *Lawrence* v. *Rutland R. R. Co.*, 67 Atl. Rep. (Vt.) 1091 (Nov. 16, 1907).

[11] *Godcharles* v. *Wigeman*, 113 Pa. St. 431 (1886).

[12] *Fraier* v. *People*, 141 Ill. 171 (*supra*).

[13] *In re* House Bill No. 203, 21 Colo. 27 (1895).

[14] *State* v. *Loomis*, 115 Mo. 307 (*supra*).

[15] *Lawrence* v. *Rutland R. R. Co.* 67 Atl. Rep. (Vt.) 1091 (*supra*).

statute involved is held not to be a deprivation of liberty or property without due process of law; nor a denial of the equal protection of the laws; nor an invalid classification as to companies properly included, because others may be improperly included; nor an unlawful interference with the employee's liberty to contract, inasmuch as it operates on him but indirectly, while the direct restriction upon the employer's right is unobjectionable.

EQUITABLE JURISDICTION TO RESTRAIN LEGAL PROCEEDINGS UNDER ALLEGED UNCONSTITUTIONAL STATUTE.

The jurisdiction of equity to restrain proceedings at law to collect penalties imposed by an alleged unconstitutional statute —when the constitutionality of the statute could be determined in a suit at law—was recognized in the recent case of *Consolidated Gas Co.* v. *City of New York* (Circuit Ct. of U. S. for South. Dist. of N. Y., opinion filed Dec. 20, 1907). In so holding, the decision is in accord with the majority view.[1] This view rests upon the jurisdiction of equity to prevent a multiplicity of suits.

In general, there are two classes of cases in which equity takes jurisdiction to prevent a multiplicity of suits: (1) where a single plaintiff or defendant in order to secure redress must bring or defend a number of suits; (2) where a number of plaintiffs or defendants are parties to a litigation which presents but one issue of law or fact. According to the majority view above-mentioned, the first class is further divided into cases (a) where a suit at law will not finally determine the rights of the parties, as in ejectment and nuisance, and (b) where a suit at law does determine the rights of the parties, but where a multitude of suits may arise before any single suit is determined.[2] In the first sub-division equity will not interfere until the plaintiff's right has been established at law, and this, because the multiplicity of suits does not generally arise until *after* the plaintiff's right has so been established; in the second, however, it is not requisite that the plaintiff's right should first have been established at law, since the multiplicity of suits here arises *before* his right has been established. The minority view has ignored the second sub-division, and has

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[1] City of Beckham, 118 Fed. Rep. 339; *Schlitz Brewing Co.* v. *City*, 117 Wisc., 297; *Sylvester* v. *Lewis*, 130 Mo. 323; *Davis* v. *Fleming*, 128 Ind. 271.

[2] Pomeroy's Eq. Jurisp. Sec. 254.